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8 **UNITED STATES BANKRUPTCY COURT**
9 **EASTERN DISTRICT OF WASHINGTON**

10 In re:

11 GIGA WATT, Inc., a Washington
12 corporation,

13 Debtor.

Case No. 18-03197 FPC 11

Chapter 11

14 **MEMORANDUM OF POINTS AND**
15 **AUTHORITIES IN SUPPORT OF**
16 **CHAPTER 11 TRUSTEE'S MOTION**
17 **FOR ORDER APPROVING**
18 **AGREEMENT AND GENERAL**
19 **RELEASE OF CLAIMS (CARLSON**
20 **ADVERSARY)**

21 Mark D. Waldron, in his official capacity as the Chapter 11 Trustee (the
22 "Trustee") hereby respectfully submits this Memorandum of Points and
23 Authorities in support of the *Chapter 11 Trustee's Motion for Order Approving*
24 *Agreement and General Release of Claims (Carlson Adversary)* (the "Motion")
25 pursuant to which the Trustee requests approval of that certain *Agreement and*
26 *General Release of Claims* (the "Agreement"), between, on the one hand, Mark
27 D. Waldron, in his capacity as the Chapter 11 Trustee (the "Trustee") acting on
28 behalf of and representing the estate (the "Estate") in the above-captioned

1 bankruptcy case and, on the other hand, (1) David M. Carlson, (2) Dorrinda M.
2 Carlson, (3) Enterprise Focus, Inc., a Washington corporation, and (4) Clever
3 Capital, LLC, a Washington limited liability company (collectively, “**Carlson**”).
4 Carlson and the Trustee are referred to herein collectively, as the “**Litigation**
5 **Parties**,” subject to this Court’s approval.

6 In addition, Terrain Holdings, LLC and the landlords and related parties
7 (the “**TNT Landlords**”) with respect to the Debtor’s crypto-mining facility
8 located at 474 Highline Drive, East Wenatchee, Washington (the “**TNT Facility**”)
9 have entered into certain provisions of the Agreement, subject to Court approval,
10 and as set forth more fully below. A copy of the Agreement is attached the Motion
11 as **Exhibit B**.

12 In support of the Motion, the Trustee respectfully avers:

13 **I.**

14 **INTRODUCTION**

15 The Agreement resolves a dispute with Carlson with respect to the TNT
16 Facility. It also clarifies the status of the Estate’s interest in the leases with respect
17 to the TNT Facility.

18 It provides a full general release between the Estate and Carlson, the release
19 by Carlson of any interest in the TNT Facility, and the transfer by Carlson’s
20 affiliate, Terrain Holdings LLC, to the Estate of a condominium located in
21 Quincy, Washington. According to a title report that the Trustee ordered from
22 Frontier Title & Escrow, the condominium is free and clear of any mortgages,
23 loans or other encumbrances. The Trustee has consulted with local brokers to

1 establish and determine value which is estimated at between \$350,000 and
2 \$400,000.

3 In addition, the TNT Landlords have agreed on a new deadline to reject or
4 assume the leases related to the TNT Facility. In short, the Agreement will allow
5 the Trustee to fully and robustly market the TNT Facility without the overhang of
6 uncertainty created by the litigation.

7 II.

8 BANKRUPTCY PROCEEDINGS

9 On November 19, 2018 (the “Petition Date”), Giga Watt, Inc. (the “Debtor”
10 or “Giga Watt”) commenced this case by filing a voluntary petition for relief
11 pursuant to sections 101 of the Bankruptcy Code.

12 On January 23, 2019, the Court approved the appointment of Mark D.
13 Waldron as the Trustee pursuant to its *Order Approving Appointment of Chapter*
14 *11 Trustee* [Docket. No. 146].

15 On April 19, 2019, Carlson filed Claim No. 318 asserting the right to
16 payment of \$13,575.10 on a general unsecured basis and Claim No. 319 asserting
17 the right to payment of \$1,359,891.59 on a general unsecured basis. On April 19,
18 2019, an affiliate of David Carlson, Clever Capital LLC, filed Claim No. 320
19 seeking payment of \$259,055.66 on a general unsecured basis. The foregoing
20 claims are referred to herein as the “**Carlson Proofs of Claim.**”

21 On April 22, 2019, the Trustee commenced an adversary proceeding
22 entitled, *Mark D. Waldron, in his capacity as the duly-appointed Chapter 11*
23 *Trustee v. David M. Carlson, et al*, (the “**Complaint**”) assigned adversary

1 proceeding number 19-80012 [AP Doc 1]. On May 6, 2019, Carlson filed the
2 *Defendants' Answer to Verified Complaint* [AP Doc 71] in which Carlson denied
3 all the allegations made in the Complaint.

4 On October 15, 2019, the Court entered its *Order Re Settlement Conference*
5 [ECF 85] pursuant to which a settlement conference was set for December 5, 2019
6 at 9:00 a.m. The Honorable Benjamin Hursh was appointed as mediator. The
7 mediation resulted in the Agreement for which the Trustee now seeks approval.

8 III.

9 THE TNT FACILITY

10 The TNT Facility has four buildings, Buildings A, B, C, and H (referred to
11 as H1 and H2), which the Debtor leases from TNT Business Complex LLC. Pre-
12 petition, the Debtor operated the TNT Facility and invested in tenant
13 improvements at the TNT Facility. Prepetition, and effective May 14, 2018, Giga
14 Watt entered into a power contract with the DC PUD, the *Interconnection and*
15 *Service Agreement* (the "**TNT Power Contract**"), pursuant to which the DC PUD
16 agreed to provide up to 3.3MW of power to the Debtor's operations at the TNT
17 Facility, subject to terms of the TNT Power Contract. The DC PUD terminated
18 power to the TNT Facility in December 2018. When the Trustee was appointed,
19 the TNT Facility was shut down and not operating.

1 After the Petition Date, on June 5, 2019, the Court entered its *Order*
2 *Granting Preliminary Injunction* [AP Doc 70] (the “**Preliminary Injunction**”)
3 pursuant to which, *inter alia*, the Court ordered:

4 That management and control of the Debtor’s business
5 operations and interests located at 474 Highline Drive,
6 Buildings, A, B, C, H1, H2, East Wenatchee,
7 Washington (the “TNT Facility”) are placed with Mark
D. Waldon [sic], in his official capacity as the duly-
authorized trustee in this bankruptcy case (the
“Trustee”).

8 *Id.*, at 2:17-21.

9 Pursuant to an Order dated September 30, 2019 [ECF 380], the Trustee
10 obtained post-petition credit in order to restore the electrical service and otherwise
11 re-open the TNT Facility. The Trustee continues to operate the TNT facility.

12 IV.

13 THE DISPUTE AND THE SETTLEMENT

14 A. The Dispute

15 The dispute centered on control and ownership of the TNT Facility, with
16 Carlson and the Estate each claiming ownership of the leasehold interest in the
17 TNT Leases. It also centered on the proper treatment of the Carlson Proof of
18 Claims.

19 The Trustee asserted that no amount was owed to Carlson and that the Estate
20 held the leasehold interest in the TNT Leases. Carlson disagreed.

21 B. The Settlement

22 The Agreement resolves this dispute in its entirety. The material terms
23 include a full mutual release between Carlson and the Estate. Carlson has agreed

1 to assign to the Estate any and all leasehold interests in the TNT Facility that he or
2 his affiliates may hold or assert to hold.

3 Carlson's affiliate, Terrain Holdings LLC, will transfer to the Estate a
4 condominium that is located in Quincy, Washington and that has an estimated
5 value, based on conferral with local brokers, of between \$350,000 and \$400,000.
6 The Trustee intends to hire a broker promptly and sell the Condo for the benefit of
7 the estate.

8 In addition, the Agreement brings certainty to the Estate's leasehold interest
9 in the TNT Leases. First, Carlson and the TNT Landlords release each other with
10 respect to the TNT Leases. In addition, the TNT Landlords agree that the Debtor
11 has an existing right of possession to the TNT Facility based on the TNT Leases.
12 They also agree that the Trustee's deadline to assume or reject the TNT Leases is
13 120 days after the Court enters an Order approving the Agreement. The deadline
14 is subject to extension.

15 V.

16 POINTS AND AUTHORITIES

17 A. Standard for Approving a Settlement

18 Rule 9019(a) provides that, "[o]n motion by the trustee and after notice and
19 a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P.
20 9019. To be approved, the settlement should be in the best interests of the estate
21 and "reasonable, given the particular circumstances of the case." *In re A & C*
22 *Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986). While a court generally gives
23 deference to a trustee's business judgment in deciding whether to settle a matter,

1 the Trustee “has the burden of persuading the bankruptcy court that the
2 compromise is fair and equitable and should be approved” *Id.*

3 In determining the “fairness, reasonableness and adequacy” of a proposed
4 compromise, a bankruptcy court must consider:

5 (a) The probability of success in the litigation; (b) the
6 difficulties, if any to be encountered in the matter of
7 collection; (c) the complexity of the litigation involved,
8 and the expense, inconvenience and delay necessarily
attending it; [and] (d) the paramount interest of the
creditors and a proper deference to their reasonable
views in the premises.

9 *A&C Properties*, 784 F.2d at 1381 (quoting *In re Flight Transportation*
10 *Corporation Securities Litigation*, 730 F.2d 1128, 1135 (8th Cir. 1984) (citations
11 omitted), *cert. denied*, 469 U.S. 1207, 105 S.Ct. 1169, 84 L.Ed.2d 320 (1985)).
12 “When assessing a compromise, courts need not rule upon disputed facts and
13 questions of law, but rather only canvass the issues.” *In re Schmitt*, 215 B.R. 417,
14 423 (B.A.P. 9th Cir. 1997).

15 **B. The Agreement Meets Each of the *A&C Properties* Factors.**

16 **1. *Probability of Success on the Merits Is Uncertain.***

17 The Trustee is confident in the claims that he asserted. However, Carlson
18 vehemently denied the allegations and presented every indication of a willingness
19 to contest the assertions.

20 Therefore, the probability-of-success-on-the-merits factor weighs in favor
21 of the settlement.

1 **2. *Collectability Is Questionable.***

2 Carlson has asserted that he does not own significant assets. Indeed, an
3 affiliate, Terrain Holdings LLC, is transferring the Condo to the Estate. Thus,
4 even if the Estate won the dispute, collection of damages would have been
5 problematical.

6 Therefore, the collectability factor weighs in favor of the proposed
7 settlement.

8 **3. *The Litigation Would Be Complex, Expensive, Inconvenient***
9 ***and Would Cause Delay.***

10 The dispute included substantial facts and was document intensive. The
11 hearing on the Preliminary Injunction alone lasted an entire day. There were
12 multiple witnesses and issues regarding intent. While the Trustee believes he
13 would have won certain issues on summary judgment, other issues would have
14 had to go to trial. The Trustee estimates that the litigation would have cost the
15 Estate more than \$400,000 in attorneys' fees if it had gone through trial. It also
16 consumed a disproportionate amount of the professionals' energies in a case that
17 has limited resources. The dispute also created uncertainty in the market and
18 hindered the Trustee's efforts to sell the TNT Facility.

19 Therefore, the complexity-expense-inconvenience-delay factor weighs in
20 favor of the proposed settlement.
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